IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mohan Lal Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.997/2001)

D. B. Criminal Appeal under Sec.374(2) Cr.P.C. against the judgment dated 7-11-2001 in Sessions Case No.20/2001 passed by Sh. Mahendra Kumar Agrawal, RHJS, Additional Sessions Judge (Fast Track) No.2, Bundi.

Date of Judgment: March 19, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Sanjay Mehrishi, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

In every aspect of life, no system is without its negatives. In reality, life is a mixture of plus and minus joy and sorrow, ups and downs. Facts of instant case depict these thoughts. This is the sad story of strained relations of two real brothers. Mohan Lal, the appellant herein, was placed on trial for having committed murder of his real brother Babu Lal in Sessions Case No.20/2001, before learned Additional Sessions Judge (Fast Track) No.2, Bundi, who convicted and sentenced him as under:-

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer imprisonment for six months.

U/s.4/27 Arms Act:

To suffer rigorous imprisonment for three years and fine of Rs.500/- in default to further suffer imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on May 22, 2000 informant Beni Prasad (Pw.5) gave telephonic message to Police Station Lakheri that someone gunned down his uncle. The information was recorded in Rojnamcha at 6.15 PM at No.769 and Lal Chand Kulmi SHO (Pw.12) proceeded to the hospital where he found Babu Lal (since deceased) in an injured condition. Parcha Bayan of Babu Lal (Ex.P-8) was recorded, wherein he stated that on the said day around 4-5 pm while after having a nap, he came out of the house his elder brother Mohan Lal armed with gun (topidar) came near the boundary wall and opened fire that hit his abdomen. The incident was witnessed by his wife Geeta. Parcha Bayan was sent to police station where a case was registered under section 307 IPC and investigation commenced. Statements of witnesses were recorded, accused was arrested, necessary memos were drawn. During investigation injured Babu Lal succumbed to his injuries and section 302 IPC came to be added. On completion of investigation charge sheet was filed. In course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Bundi. Charges under sections 302 IPC and 4/27 Arms Act were framed. The appellant denied the charge and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein

above.

3. We have given our anxious consideration to the submissions advanced before us and carefully scrutinised the record.

4. Death of Babu Lal was indisputably homicidal in nature. As per postmortem report (Ex.P-12) following antemortem injuries were found on the dead body:-

> Two punctured wound 0 x 1cm contusion aspect chest 1 x 1cm each 1cm apart each other 2 cm medial to left nipple and 7cm below dell clavicle with dispersion small pallet in 31cm diameter.
>
> In the opinion of Dr. P.K.tiwari (Pw.11) the cause of death was shock as a result of haemorrhage as a result of injury to left lung.

5. Geeta (Pw.4), wife of deceased, in her deposition stated that appellant hurled abuses and opened fire at her husband as a result of which her husband was severely injured. He was removed to hospital by Beni Prasad and Mahaveer. Her testimony finds corroboration from the evidence of Mahaveer (Pw.1) and Beni Prasad (Pw.3).

6. Learned counsel for the appellants assailed the impugned finding from various angles and urged as under:-

> (i) Parcha Bayan (Ex.P-8) has wrongly been relied upon for convicting the appellant, since immediately after being shot by unknown and unidentified person the deceased became unconscious and did not regain consciousness till his death.

Thus parcha bayan appears to be false, forged and concocted document.

(ii) Deceased was an educated person and he used to operate bank accounts by making signatures. Had he given statement to SHO, the parcha bayan would have bore his signatures and not the thumb impression.

(iii) Prahlad (Pw.5) in his cross examination admitted that he remained with the deceased till his death and when glucose drips were given to Babulal he was sitting by his side and in his presence SHO Lakheri arrived and obtained thumb impression of Babu Lal on blank papers. Signature of Medical Officer had also been obtained on the same.

(iv) Over-writing on letter (Ex.P-7) regarding time of making request creates doubt about genuineness of the prosecution story.

(v) The SHO did not comply with the provisions of Rule 6.22 of Rajasthan Police Rules. Instead of recording parcha bayan himself he should have requisitioned the service of Judicial Magistrate.

(vi) The prosecution deliberately withheld the bed-head ticket of the deceased.

(vii) The prosecution failed to connect the bullets recovered from the body with gun allegedly recovered from the appellant.

7. Since the conviction of appellant is based on the dying declaration of the deceased we deem it necessary to narrate the principles governing dying declaration, laid down by the Apex Court in the various

judgments. They are as under:-

(i) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination (K. Ramchandra Reddy Vs. Public Prosecutor (1976)3 SCC 618).

(ii) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (Rashid Beg Vs. State of MP (1974)4 SCC 264).

(iii) A dying declaration which suffer from infirmity cannot form the basis of conviction. (Ram Manorath Vs. State (1981)2 SCC 654).

8. It is in view of the above parameters that we have to adjudge the acceptability of the alleged dying declaration. Lal Chand Kulmi, SHO (Pw.12) deposed that on receiving information of the incident he reached to the hospital and recorded paracha bayan of injured Babu Lal in presence of Dr.Mahendra Chauhan after obtaining his certificate in regard to the condition of injured. Even after searching cross examination his testimony could not be shattered. Dr. Mahendra Chauhan (Pw.6) categorically stated that on being enquired by SHO about the condition of injured he certified that injured was fit to give statement. He further deposed that the SHO recorded the statement of injured in his presence.

9. At this juncture we deem it appropriate to refer Rule 6.22 of the Rajasthan Police Rules,1965 which provides as under:-

"6.22 Dying declaration (1) A dying declaration shall,

whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible, be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no Magistrate can be obtained, the declaration shall, when a gazetted officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

We find that compliance of Rule 6.22 has been made in letter and spirit in the instant case. The injured was examined by medical officer with a view to ascertain that he was sufficiently in possession of his reason to make a lucid statement. Since Medical Officer was a gazetted officer, presence of two or more reliable witnesses unconnected with the police department was not required.

10. Having carefully tested the parcha bayan of deceased and analysing the statements of prosecution witnesses from the point of view of trustworthiness, we do not see any material discrepancy in the evidence. Parcha bayan of deceased, which was recorded in presence of medical officer, is corroborated from the ocular testimony of witnesses. Normal and material discrepancies may also be defined. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest a truthful a witness may be. Material discrepancies are those

which are not normal and not expected of a normal person. Courts have to label the category into which a discrepancy may be categorized. While normal discrepancies do not erode the credibility of witness, material discrepancies do.

11. It is well settled that when ocular evidence is cogent, credible and trustworthy, minor variance, if any, is not of any consequence. Their Lordships of Supreme Court in Krishnan Vs. State (2003)7 SCC 56 indicated that witnesses are the eyes and ears of justice. Eye witnesses account would require a careful independent assessment and evaluation for its credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the credit of the witnesses, their performance in the witness box; their power of observation etc. In the instant case even from the cross examination of prosecution witnesses nothing infirm could be elicited to caste a doubt on their testimony.

12. So far question of related witness is concerned that does not have any concern since the ocular evidence is corroborated from dying declaration of the deceased. In Ram Lakhan Vs. State of UP (AIR 1996 SC 3429) held that the evidence of close relatives of deceased is not liable to be rejected on ground that they are interested witnesses. What is necessary is that Court should scrutinize evidence of such witness carefully. In Baitullah Vs. State of UP (AIR 1997 SC 3946) Hon'ble Supreme Court held that evidence of interested witness cannot be discarded merely on ground that he is interested. It is normally expected that witness would not leave out real culprits and rope in innocent persons.

13. Having carefully scanned the impugned judgment of learned trial court we see no infirmity in it.

14. For these reasons, we find no merit in the instant appeal and the same accordingly stands dismissed. Conviction and sentence of appellant under section 302 IPC and 4/27 Arms Act are maintained.

(Guman Singh),J. (Shiv Kumar Sharma)J.

arn/